

# The Gazette of India

## EXTRAORDINARY PART II—Section 2 PUBLISHED BY AUTHORITY

No. 57] NEW DELHI, MONDAY, DECEMBER 2, 1963/AGRAHAYANA 11, 1885

### RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 2nd December, 1963:—

BILL No. XXXIX of 1963

*A Bill further to amend the Industrial Disputes Act, 1947.*

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Industrial Disputes (Amendment) Act, 1963.

Short title  
and com-  
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the principal Act),—

Amendment  
of section 2.

(i) in sub-clause (i) of clause (a)—

(a) the words and figures “the Agricultural Refinance Corporation established under section 3 of the Agricultural Refinance Corporation Act, 1963, or” shall be omitted;

(b) for the words “the Deposit Insurance Corporation established”, the following shall be substituted, namely:—

“the Employees’ State Insurance Corporation established under section 3 of the Employees’ State Insurance Act, 1948, or the Agricultural Refinance Corporation established under section 3 of the Agricultural Refinance Corporation Act, 1963, or the Deposit Insurance Corporation established”;

3 of 1948.

10 of 1963.

(c) after the words "an oil-field", the words "a Cantonment Board," shall be inserted;

(ii) clause (aa) shall be re-lettered as clause (aaa) and before the clause (aaa) as so re-lettered, the following clause shall be inserted, namely:—

'(aa) "arbitrator" includes an umpire;';

(iii) clause (eee) shall be omitted;

(iv) after clause (l), the following clauses shall be inserted, namely:—

'(la) "major port" means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908; 15 of 1908.

(lb) "mine" means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952; 35 of 1952.

(v) in clause (n),—

(i) in sub-clause (i), the words "or any transport service for the carriage of passengers or goods by air" shall be inserted at the end;

(ii) in sub-clause (vi), for the word "Schedule", the words "First Schedule" shall be substituted.

Amendment  
of section 7.

3. In section 7 of the principal Act, in sub-section (3), clauses (a) and (b) shall respectively be re-lettered as clauses (d) and (e) and before clause (d) as so re-lettered, the following clauses shall be inserted, namely:—

"(a) he is, or has been, a Judge of a High Court; or

(b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

(c) he has held the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, or of any Tribunal, for a period of not less than two years; or". 48 of 1950.

Amendment  
of section  
7A.

4. In section 7A of the principal Act, in sub-section (3), after clause (a), the following clause shall be inserted, namely:—

"(aa) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or".

5. In section 10 of the principal Act, in sub-section (6), the following *Explanation* shall be inserted at the end, namely:—

Amendment  
of section  
10.

*“Explanation.*—In this sub-section, “Labour Court” or “Tribunal” includes any Court or Tribunal or other authority constituted under any law relating to investigation and settlement of industrial disputes in force in any State.”.

6. In section 10A of the principal Act,—

Amendment  
of section  
10A.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where an arbitration agreement provides for a reference of the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purposes of this Act.”;

(b) in sub-section (3), for the words “fourteen days”, the words “one month” shall be substituted;

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-section (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.”;

(d) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-section (3A), the appropriate Government may, by order, prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference.”.

7. In section 11 of the principal Act, in sub-section (8), for the word and figures “and 482”, the word and figures “482 and 484” shall be substituted.

Amendment  
of section  
11.

Amendment  
of section  
12.

8. In section 12 of the principal Act, in the proviso to sub-section (6), after the words "Provided that", the words "Subject to the approval of the conciliation officer," shall be inserted.

Amendment  
of section  
18.

9. In section 18 of the principal Act,—

(a) in sub-section (2), for the words "An arbitration award", the words, brackets and figure "Subject to the provisions of sub-section (3), an arbitration award" shall be substituted;

(b) in sub-section (3),—

(i) after the words "conciliation proceedings under this Act", the words, brackets, figures and letters "or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A" shall be inserted;

(ii) in sub-clause (b), after the words "the Board," the word "arbitrator," shall be inserted.

Amendment  
of section  
19.

10. In section 19 of the principal Act, after sub-section (6), the following sub-section shall be inserted, namely:—

"(7) No notice given under sub-section (2) or sub-section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be."

Amendment  
of section  
23.

11. In section 23 of the principal Act,—

(i) in clause (b), the word "or" occurring at the end shall be omitted;

(ii) after clause (b), the following clause shall be inserted, namely:—

"(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-section (3A) of section 10A; or".

Amendment  
of section  
24.

12. In section 24 of the principal Act,—

(i) in clause (ii) of sub-section (1), after the word and figures "section 10", the words, figures, letters and brackets "or sub-section (4A) of section 10A" shall be inserted;

(ii) in sub-section (2),—

(a) after the word "Board," the words "an arbitrator, a" shall be inserted;

(b) after the word and figures "section 10", the words, figures, letters and brackets "or sub-section (4A) of section 10A" shall be inserted.

13. For section 25B of the principal Act, the following section shall be substituted, namely:—

Substitution  
of new  
section for  
section 25B.  
Definition of  
continuous  
service.

"25B. For the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this

Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."

Amendment  
of section  
25F.

14. In section 25F of the principal Act,—

(i) in clause (b), for the words "for every completed year of service", the words "for every completed year of continuous service" shall be substituted;

(ii) in clause (c), the following words shall be inserted at the end, namely:—

"or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

Amendment  
of section  
25FFF.

15. In section 25FFF of the principal Act,—

(i) in the *Explanation* to sub-section (1), after the words "or accumulation of undisposed of stocks", the words "or the expiry of the period of the lease or the licence granted to it" shall be inserted;

(ii) in sub-section (2), for the words "completed year of service", the words "completed year of continuous service" shall be substituted.

Amendment  
of section  
25H.

16. In section 25H of the principal Act, for the words "to the retrenched workmen to offer themselves for re-employment, and the retrenched workmen", the words "to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen" shall be substituted.

Amendment  
of section  
25J.

17. In section 25J of the principal Act, for the proviso to sub-section (1), the following proviso shall be substituted, namely:—

"Provided that where under the provisions of any other Act or rules, orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter

which are more favourable to him than those to which he would be entitled under this Act, the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act."

18. In section 33 of the principal Act,—

Amendment  
of section  
33.

(i) in sub-section (1), after the words "any proceeding before", the words "an arbitrator or" shall be inserted;

(ii) in sub-section (2), after the words "the standing orders applicable to a workman concerned in such dispute", the words "or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman" shall be inserted;

(iii) in sub-section (5), after the word "Board," the words "an arbitrator, a" shall be inserted.

19. In section 33C of the principal Act,—

Amendment  
of section  
33C.

(i) in sub-section (1), for the words "the workman may", the following shall be substituted, namely:—

"the workman himself or any other person authorised by him in writing in this behalf, or in the case of the death of the workman, his assignee or heirs may";

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

"(1A) If any question arises as to the money due under sub-section (1) to a workman from his employer, the appropriate Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under this Act or under any corresponding law relating to investigation and settlement of industrial disputes in force in a State, and this Act or the corresponding law shall have effect in relation to the Labour Court, as if the question so referred were a matter referred to the Labour Court for adjudication under this Act or that law.

(1B) The decision of the Labour Court shall be forwarded by it to the appropriate Government which made the reference and any money found due by the Labour Court may be recovered in the manner provided in sub-section (1)."

Amendment  
of section  
38.

20. In section 38 of the principal Act,—

(a) in clause (aa) of sub-section (2), after the words “signed by the parties”, the following words, brackets, figures and letters shall be inserted, namely:—

“the manner in which a notification may be issued under sub-section (3A) of section 10A,”;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Every rule made by the Central Government under this section shall be laid before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session in which it is so laid or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”.

Substitution  
of new  
section for  
section 40.  
Power to  
amend  
Schedules.

21. For section 40 of the principal Act, the following section shall be inserted, namely:—

“40. (1) The appropriate Government may, if it is of opinion that it is expedient or necessary in the public interest so to do, by notification in the Official Gazette, add to the First Schedule any industry, and on any such notification being issued, the First Schedule shall be deemed to be amended accordingly.

(2) The Central Government may, by notification in the Official Gazette, add to or alter or amend the Second Schedule or the Third Schedule and on any such notification being issued, the Second Schedule or the Third Schedule, as the case may be, shall be deemed to be amended accordingly.

(3) Every such notification shall, as soon as possible after it is issued, be laid before the Legislature of the State, if the notification has been issued by a State Government, or before Parliament, if the notification has been issued by the Central Government.”.

Amendment  
of First  
Schedule.

22. In the First Schedule to the principal Act, in Item 1, for the words “by land, water or air”, the words “by land or water” shall be substituted.

23. In the Fourth Schedule to the principal Act, in Item 11, for the words "not due to forced matters", the words "not occasioned by circumstances over which the employer has no control" shall be substituted. Amendment  
of Fourth  
Schedule.

24. The provisions of section 7 or section 7A of the principal Act as amended by this Act shall not apply to, or affect, any proceeding which, on the date of the commencement of this Act, is pending before any Labour Court or Tribunal, and every such proceeding shall be continued and disposed of as if this Act had not been passed. Savings.

## STATEMENT OF OBJECTS AND REASONS

The Bill seeks to make certain changes in the Industrial Disputes Act, 1947. The important changes in the Act were discussed at various tripartite meetings like the Indian Labour Conference and the Standing Labour Committee and have their approval.

2. Section 7A of the Act lays down the qualification for appointment as the Presiding Officer of a Tribunal. The State Governments have been experiencing difficulty in getting suitable persons for appointment as Presiding Officers of Tribunals. Many of the State Governments have accordingly amended this section in its application to their States enabling District and Sessions Judges to be appointed to these posts. It is now proposed to provide for the appointment of a serving or a retired District Judge or Additional District Judge of not less than three years' standing as a Presiding Officer of the Tribunal.

3. In order to encourage arbitration, it is proposed to provide (1) for the appointment of umpires in case of difference of opinion between an even number of arbitrators, (2) for prohibition of strikes and lock-outs during arbitration proceedings, and (3) for application of section 33 during the pendency of any arbitration proceedings. Further, an arbitration award is binding at present only on the parties to the arbitration. This position is discouraging employers from agreeing readily to voluntary arbitration as they cannot enforce it on the workers who are not a party to the agreement. It is now being provided in the Bill that the arbitration award shall have the same binding force as an award of a Tribunal provided that the appropriate Government is satisfied that the parties to the arbitration agreement represent the majority of each party.

4. The Supreme Court has held that notice to terminate an award can be given by a group of workmen acting collectively either through their union or otherwise, and it is not necessary that such a group or the union should represent the majority of workmen bound by the award. In order to prevent any irresponsible or dissatisfied group of workmen from terminating the settlement or an award without any regard for the effect of such termination on the entire body of the workmen, it is proposed to amend the Act so

that in future only a majority of workmen shall have the right to terminate a settlement or award.

5. Opportunity has been availed of to propose a few other essential amendments which are mainly of a formal or clarificatory nature.

6. 'Notes on clauses' explain the important provisions of the Bill.

NEW DELHI;  
The 19th November, 1963.

J AISUKHLAL HATHI.

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*Notes on clauses*

*Clause 2.*—(i) Cantonment Boards are having establishments in different parts of the country. Like-wise, the Employees' State Insurance Corporation is having its branches all over the country. For the purpose of maintaining uniformity of treatment in those establishments, this clause seeks to amend the Act so that the Central Government becomes the 'appropriate Government' for dealing with industrial disputes concerning such establishments.

(ii) Sub-clause (iv) seeks to provide for the definition of the terms 'major port' and 'mine' for the purposes of the Act.

*Clause 3.*—Under the existing provisions, presiding officers of Industrial Tribunals need not necessarily have held a judicial office for seven years or more. But they will not be eligible for appointment as presiding officer of a Labour Court. It is anomalous that a person qualified to be the presiding officer of a Tribunal, an authority having wider powers, may not be qualified to be the presiding officer of a Labour Court. This clause seeks to remove this anomaly.

*Clause 4.*—State Governments have been feeling difficulty in having presiding officers of Industrial Tribunals with the qualifications prescribed at present. They have been pressing for relaxation of the existing qualifications. Some of the State Governments have already amended the Act in its application to those States to permit the appointment of a District Judge or an Additional District Judge of not less than three years' standing. The Sixteenth Session of the Indian Labour Conference had also recommended that serving or retired District Judges may be made eligible for such appointments. This clause seeks to give effect to this recommendation.

*Clauses 6, 9, 11, 12 and 18.*—The Twentieth Session of the Standing Labour Committee recommended that a provision be made for an umpire in cases of voluntary arbitration under section 10A of the Act. Now, provision has been made for the same. It has also been further provided that in cases where the parties agreeing to have voluntary arbitration represent majority of each party, the award of the arbitrator will be made binding on all persons in the establishment. In order to safeguard the interest of the workmen who are not parties to the arbitration agreement provision has been

made to afford them an opportunity to represent their case before the arbitrator. It has also been provided that in such cases, resort to strikes and lock-outs during the pendency of arbitration proceedings shall be prohibited, and any strike or lock-out resorted to during such pendency of proceedings would be deemed to be illegal. Government have also been given power to prohibit continuance of any strike or lock-out in connection with the dispute. In addition, it has also been provided that conditions of service, etc., shall remain unchanged during the pendency of arbitration proceedings.

*Clause 10.*—The Supreme Court has held that for the purpose of giving notice for termination of an award, it is not necessary that the group of workmen acting collectively either through their union or otherwise, should represent the majority of the workmen bound by the award. In order to prevent any irresponsible or dissatisfied group of workmen from terminating the settlement or an award without any regard for the effect of such termination on the entire body of the other workmen, this clause seeks to amend the Act so that only a majority of workmen bound by a settlement or award have the right to terminate the same.

*Clauses 13 and 14.*—Clause 13 relates to the definition of continuous service for the purpose of lay-off and retrenchment compensation. It seeks to remove certain difficulties in interpreting the term 'continuous service' by re-arranging suitably the provisions of clause (eee) of section 2 and section 25B of the Act. The major changes effected by these two clauses are as follows:—

(i) all the days on which a workman has been laid off during a year under an agreement, etc., for no fault of his, would be counted for computing the working period;

(ii) any period of absence due to temporary disablement resulting from an employment injury should also count towards 240 days of attendance;

(iii) the period of qualifying attendance for workmen employed below ground should be reduced to 190 days (this would bring the provision in line with the relevant provision under the Mines Act, 1952);

(iv) the completed years of service should be continuous.

*Clause 15.*—Section 25FFF of the Act provides that when an undertaking is closed down, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall be entitled to notice and compensation in accordance with the provisions of section 25F, as if the

workman has been retrenched. The compensation is, however, limited to three months' average pay where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer. This clause seeks to amend the Act so as to provide that in the case of closures due to expiry of lease or licence, there should be no ceiling limit of three months' average pay, but, full compensation should be payable to the workman concerned. It may be stated that this proposal was accepted by the Standing Labour Committee in its meeting held in October, 1962.

*Clause 18.*—As regards applicability of the provisions of sub-section (2) of section 33 (relating to alteration of conditions of service or punishment of workmen under certain circumstances) to establishments which do not have Standing Orders, there has been a difference of opinion among Industrial Tribunals. This clause seeks to clarify the position by providing that in the absence of Standing Orders, the employer will have to comply with the terms of contract, express or implied, while taking action under this section.

*Clause 19.*—The provisions contained in section 33C relating to recovery of money due from an employer, are similar to the provisions of section 17 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 as it stood before it was amended in 1962. The provisions of the latter Act were subjected to scrutiny by the Supreme Court which held that the appropriate Government or any other authority specified by it had not been vested with the normal powers of a Court or a Tribunal to hold a formal enquiry and that they had no power to examine the merits of the claim of the workman against the employer. In the light of this, section 17 was amended in 1962 by the Working Journalists (Amendment) Act, 1962 (65 of 1962). The amendment provided that the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court, etc., for determining the amount due to a working journalist under the Act. Clause 19 amends section 33C of this Act on the lines of the amended provision in the Working Journalists (Fixation of Rates of Wages) Act, 1958.

It also provides that any person authorised by a workman in writing in this behalf, or in the case of the death of the workman, his heir or assignee shall also have the right to apply for recovery of the money due to him.

*Clause 21.*—This clause substitutes a new section for section 40 so as to empower the "appropriate Government" to add to the First Schedule of the Act any industry by issue of notification, if it is of opinion that it is expedient or necessary so to do in the public interest.

### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 20 of the Bill seeks to amend section 38 of the Act which empowers the State Government to make rules to carry out the purposes of the Act. The matters in respect of which such rules may be made have been specified in the said section. An amendment to the section is being proposed with a view to enable the Government to prescribe the manner in which a notification may be issued under sub-section (3A) of section 10A. This is a matter of a routine or administrative character. The delegation of legislative power is of a normal character.

## FINANCIAL MEMORANDUM

Clause 3 of the Bill incorporates the qualifications for appointment as the presiding officers of a Tribunal in the qualifications for appointment as the presiding officer of a Labour Court. Though the intention behind the proposed amendment is to enable a presiding officer of a Tribunal being appointed as a presiding officer of a Labour Court also in addition to his own duties, there is a possibility of persons with qualifications higher than those prescribed at present being appointed as presiding officers of Labour Courts direct. In such a case, some additional expenditure (due to higher pay to such persons on appointment) may be involved. It is not possible to determine at this stage the overall effect of the expenditure and the economy likely to accrue out of the provisions of this clause.

2. Clause 13 of the Bill defines the term "continuous service". It provides, among others, that the workman employed below ground in a mine shall be deemed to be in continuous service for a period of one year or six months if the workman has actually worked under the employer for not less than one hundred and ninety days during a period of twelve calendar months and ninety-five days during a period of six calendar months, respectively, preceding the date with reference to which calculation is to be made. The effect of this may be that more workmen employed below ground in a Government mine will become eligible for layoff and retrenchment compensation. The financial liability, as a result, is likely to be increased. It is however not possible to determine the amount likely to be incurred therefor.

3. Clause 15(i) of the Bill provides that the present ceiling limit of three months' pay as compensation will not be operative in the case of closures due to the expiry of the period of the lease or the licence granted to an undertaking. In such cases, full compensation will be payable to the workmen concerned. This provision may entail some additional financial liability, in the form of enhanced compensation, in respect of Government undertakings operating under a lease or licence. It is not possible to assess the total additional expenditure likely to be incurred as a result of this also.

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B. N. BANERJEE,  
*Secretary.*